

SERVED: June 23, 2006

NTSB Order No. EA-5234

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 21st day of June, 2006

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| Petition of |) | |
| |) | |
| SEAN ALLEN LENSER |) | |
| |) | |
| for review of the denial by |) | Docket SM-4690 |
| the Administrator of the |) | |
| Federal Aviation Administration |) | |
| of the issuance of an airman |) | |
| medical certificate. |) | |
| _____ |) | |

OPINION AND ORDER

The Administrator has appealed from the oral initial decision and order Administrative Law Judge William R. Mullins issued in this proceeding on February 14, 2006.¹ By that decision, the law judge granted petitioner's appeal for a third-class medical certificate. We reverse the law judge's order.

The federal air surgeon's denial of petitioner's

¹ A copy of the initial decision, an excerpt from the hearing transcript, is attached.

application for a medical certificate was initially predicated on his history of psychosis and personality disorder (Exhibit J-1A at 33), both of which are circumstances that render applicants ineligible for third-class airman medical certification under 14 C.F.R. § 67.307(a)(3) and (c).² The federal air surgeon subsequently withdrew the personality disorder determination, and cited 14 C.F.R. § 67.307(a)(2)³ and (3) as the correct basis for petitioner's disqualification. Exhibit J-1A at 1. The Administrator's appeal challenges the law judge's decision as to both § 67.307(a)(2) (psychosis) and § 67.307(a)(3) (bipolar disorder).

² Under 14 C.F.R. § 67.307(a)(3), bipolar disorder is a disqualifying condition. Similarly, under § 67.307(c), an individual who has another "personality disorder, neurosis, or other mental condition" that the federal air surgeon concludes will make the person unable to perform airman duties safely, or is expected to make the person unable to perform those duties, will be deemed ineligible for a medical certificate.

³ Under 14 C.F.R. § 67.307(a)(2), an individual who has an established medical history or clinical diagnosis of a psychosis does not meet the mental standard for third-class medical certification. The regulations define "psychosis" as referring to a mental disorder in which:

- (i) The individual has manifested delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition; or
- (ii) The individual may reasonably be expected to manifest delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition.

Petitioner's airman medical file, which dates back to 1998, includes evidence of an involuntary admission to a psychiatric facility (Exhibit J-1A at 7-8; J-1B at 138-151), and repeated references to symptoms of psychosis and bipolar disorder.⁴ In addition, petitioner's medical file includes multiple references to hallucinations.⁵ The evidence also shows that petitioner received psychiatric medication in 1998 and 1999, but that he no longer needs such medication. See, e.g., J-1A at 19-24.

The Administrator's appeal challenges the law judge's decision that petitioner's medical history was not significant enough to render him ineligible for a medical certificate. The Administrator refers to several pages in the voluminous airman medical file, and to her chief psychiatrist's testimony regarding his thorough evaluation of petitioner's medical

⁴ Exhibit J-1A at 11 ("manic or hypomanic symptoms"), 13 ("psychotic symptoms"), 16 ("Bipolar like symptoms"), 19 ("rapid thoughts"), 21 ("mood swings which were a real problem"), 59 ("unusual thought processes"); Exhibit J-1B at 141 ("increase in motor activity due to anxiety ... some pressured speech and racing thoughts"), 142 ("Impression: 1. Bipolar disorder, mixed"); Exhibit P-2 at 1 ("endorsed psychotic symptoms").

⁵ Exhibit J-1A at 21 ("was hearing voices"), 31 ("auditory hallucinations"), 58 ("sometimes hears whispers like his name"), 120 ("Impression: Depression and hallucinations"); Exhibit J-1B at 141 ("does have visual and auditory hallucinations including stating that he sees Satan. He sees and talks to one of his deceased teachers, and he hears voices in the environment"); Exhibit P-2 at 4 ("patient does endorse hearing voices ... he interprets the voices as representing screaming and cries from hell ... patient had an experience of seeing Satan in his bedroom").

records.

In response, petitioner primarily argues that he does not have an established history or clinical diagnosis of psychosis. Petitioner bases this argument on his own testimony, wherein he stated that he dishonestly described hallucinations and other thought processes that never occurred in order to receive attention as a teenager. Transcript (Tr.) 43-44. Petitioner also bases his argument on a recent evaluation that Dr. Diercks, who saw petitioner at the time of his discharge from the aforementioned psychiatric facility, completed. Dr. Diercks's most recent evaluation, dated February 9, 2005, repealed the original diagnosis that he gave to petitioner, and stated that, "[w]ith additional medical information we are now able to accurately construct [petitioner's] diagnosis as that of an Adjustment Disorder with Bipolar like symptoms secondary to an adverse effect from medication." Exhibit J-1A at 16. Petitioner also contends that any psychiatric problems he experienced were due to his ingestion of Prozac, and were confined to a short period of time, between 1998 and 1999. Since that time period, petitioner testified that he has successfully completed a two-year college degree and held a full-time job. Tr. 26-27.

In support of her argument that denial of a third-class

medical certificate is proper in this case, the Administrator relies on Petition of Rasmussen, NTSB Order No. EA-5059 (2003), wherein we held that the petitioner was ineligible for a medical certificate because of his history of psychosis, and that he did not "produce competent medical evidence in support of his position that he is qualified for medical certification." Id. at 2. The Administrator also cites Petition of Arechavala, 3 NTSB 3060 (1980), wherein we held that, notwithstanding the petitioner's current absence of any symptoms of psychosis, her single psychiatric episode in a hospital emergency room, which occurred two years before the Administrator's denial of a medical certificate, rendered her ineligible for medical certification. Id. at 3061, 3063-64. Petitioner attempts to distinguish Rasmussen by arguing that he presented "logical and compelling evidence that he was mis-diagnosed." Pet.'s Br. at 20. Similarly, petitioner attempts to distinguish Arechavala by stating that clinically significant events and observations existed regarding the petitioner in Arechavala, whereas no clinical evidence of hallucinations exists in petitioner's case here.

We recognize that petitioner, unlike the petitioner in Rasmussen, did present some medical evidence suggesting that he does not currently suffer from psychosis or bipolar disorder.

Although the law judge accepted Dr. Diercks's report as one that repealed petitioner's original diagnosis, we find that the evidence of petitioner's symptoms of psychosis and bipolar disorder, both of which are specifically disqualifying conditions, outweighs the influence of Dr. Diercks's report. Petitioner also refers to the reports of Dr. Steven Westby and Dr. Mark Hannappel as reports that included opinions similar to those of Dr. Diercks. In both Drs. Westby's and Hannappel's reports, however, they implied that petitioner did have symptoms of psychosis or bipolar disorder.⁶

We also do not find that petitioner's contention that the absence of any current symptoms of psychosis or bipolar disorder is persuasive enough to satisfy his burden of proving that he is eligible for a medical certificate. We have previously stated that, regardless of a petitioner's current condition, "a psychotic episode or psychosis" is sufficient to deny a petitioner's application for a medical certificate.

Administrator v. Bohnen, 1 NTSB 1882, 1883 n.8 (1972).

Likewise, our holding in Arechavala, 3 NTSB at 3062, compels a finding of disqualification in this case. Although

⁶ See Exhibit J-1A at 9 (referring to hospitalization due to "suicidal thoughts—everything in his life 'piled up'"), 11 ("manic or hypomanic symptoms"), 13 ("possibly even psychotic symptoms at the time"), 58 (referring to certain auditory hallucinations).

the petitioner in Arechavala did not have symptoms of psychosis when the Administrator denied her application for a medical certificate, she previously had an "acute psychotic episode," id. at 3061, which we found sufficient for disqualification. In the case at hand, petitioner's medical records contain multiple reports referring to hallucinations (which, under the regulations, would be sufficient to constitute a history of psychosis), and other symptoms of psychosis and bipolar disorder. Petitioner's argument that no clinical evidence of psychosis or bipolar disorder exists because no one *observed* petitioner while he was hallucinating is not persuasive. The regulations do not require observation of a petitioner while he or she experiences such symptoms; instead, the applicable regulation requires petitioners to have "no established medical history or clinical diagnosis" of psychosis or bipolar disorder. 14 C.F.R. § 67.307(a)(2), (3).

With regard to the evidence showing petitioner's symptoms of psychosis and bipolar disorder, petitioner's argument is two-fold: on one hand, he argues that no established medical history or clinical diagnosis of either psychosis or bipolar disorder exists, and on the other hand, he attempts to excuse the evidence by stating that he was not honest during his psychiatric evaluations and that any symptoms he experienced

were the result of his ingestion of Prozac (for depression). As stated above, we find the evidence in the medical records, as well as the testimony of the FAA's chief psychiatrist, sufficient to render a conclusion that petitioner experienced some symptoms of either psychosis, bipolar disorder, or both. Regarding petitioner's attempt to excuse this evidence, we find that petitioner's alleged dishonesty in describing his symptoms is questionable, given the compilation of evidence in the record. Moreover, the regulations regarding psychosis and bipolar disorder do not provide a caveat for situations wherein symptoms of psychosis or bipolar disorder are the result of a pharmaceutical remedy. Overall, we find that the evidence in petitioner's airman medical file is sufficient to render petitioner ineligible for a medical certificate.

In conclusion, petitioner has not met his burden of proving that he is eligible for a third-class medical certificate. As such, we reverse the law judge's initial decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The order of the law judge granting petitioner's petition is reversed; and

3. The denial of petitioner's application for a medical certificate under 14 C.F.R. § 67.307(a)(2) and (3) is affirmed.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HERSMAN, and HIGGINS, Members of the Board, concurred in the above opinion and order.